

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 54 of 2002

Nasir Hussain
S/o Umar Hussain,
R/o Mohalla Niyaj Ganj,
District Almora.

..... Revisionist

Versus

Tanvir Alam Quarashi and others

..... Respondents

Mr. Sudhir Singh, learned counsel for the revisionist.
Mr. Kailash Chand Tiwari, learned counsel for respondent No. 1.

Hon. Prafulla C. Pant, J.

Heard learned counsel for the parties.

2) This revision is directed against the order dated 08.05.2002, passed in Civil Appeal No. 24 of 1999 by District Judge, Almora, whereby the application No. 27-C moved by the appellant / revisionist was rejected by the lower appellate court.

3) From the perusal of the impugned order it appears that at the appellate stage, the appellant moved an application No. 27-C before the lower appellate court, for permission to adduce additional evidence by way of producing the handwriting expert to prove the document filed in support of the appellant. From the record it further reveals that the document sought to be proved is already proved before the trial court and was exhibited by the trial court.

4) No party is allowed to adduce additional evidence at the appellate stage except as provided under Rule 27 of Order 41 of the Code of Civil Procedure, 1908. Said Rule 27, reads as under:

“27. Production of additional evidence in Appellate Court. –(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

From the above provision, it is clear, that a party is not allowed to adduce evidence except on conditions, as above.

5) Learned counsel for the revisionist argued that his case is covered within the expression 'for any other substantial cause'. In the opinion of this Court, the said expression cannot be given such a wide meaning which dilutes or kills the spirit of Rule 27. If every condition is included in it, then there would have been no need to incorporate Clause (a) or Clause (aa). Infact, the application No. 27-C, before the lower appellate court, is moved after finding that the trial court has found that the handwriting has not been proved by the expert, though it has been proved by the witnesses. That being so, a party cannot be permitted to fill the lacuna under the aforesaid Rule. As such, the impugned order passed by the lower appellate court cannot be said to be either without jurisdiction or that it suffers any material illegality.

6) Therefore, for the reasons as discussed above, this revision is dismissed in limine with the observation that the party shall be at liberty before the lower appellate court to show that the trial court has not appreciated the evidence properly.

(Prafulla C. Pant, J.)

Dt. March 23, 2006.

H. Negi